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Federal Communications Commission

DA 98-2583

DEC 28 1998  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 98-238
Beehive Telephone Company, Inc.	)	
Beehive Telephone, Inc. Nevada	)	
	)	Transmittal No. 14
Tariff F.C.C. No. 1	)	

**ORDER**

**Adopted: December 22, 1998**

**Released: December 22, 1998**

By the Chief, Common Carrier Bureau

**I. INTRODUCTION**

1. On December 8, 1998, Beehive Telephone Company, Inc. and Beehive Telephone, Inc., Nevada (collectively "Beehive") filed Transmittal No. 14, which proposes to increase its local switching rate above the levels prescribed in the *Beehive Tariff Investigation Order, Transmittal No. 8*,<sup>1</sup> and delete Beehive's non-premium local switching rates. On December 15, AT&T Corp. (AT&T) filed a Petition to Reject or, in the Alternative, Suspend and Investigate Beehive's Transmittal No. 14. Beehive filed a Reply to AT&T's Petition on December 21, 1998. For the reasons set forth below, we hereby reject Transmittal No. 14 to the extent that it proposes to increase Beehive's local switching rate in violation of the Commission's prescription in the *Beehive Tariff Investigation Order, Transmittal No. 8*.

**II. BACKGROUND**

2. On December 17, 1997, Beehive filed Transmittal No. 8, which, *inter alia*, proposed revised rates for premium and non-premium local switching. The Commission investigated that tariff filing, and concluded on June 1, 1998, that Beehive had failed to justify its revised rates as required under the Commission's rules.<sup>2</sup> The Commission therefore prescribed rates for these services based on the industry averages for comparably sized smaller LECs.<sup>3</sup> On September 28, 1998, the Commission

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<sup>1</sup> *Beehive Telephone Company, Inc. and Beehive Telephone, Inc., Nevada*, CC Docket No. 97-249, Memorandum Opinion and Order, 13 FCC Rcd 12275 (1998) (*Beehive Tariff Investigation Order, Transmittal No. 8*).

<sup>2</sup> *Beehive Tariff Investigation Order, Transmittal No. 8*, 13 FCC Rcd 12275.

<sup>3</sup> *Id.*

summarily rejected Beehive's petition for reconsideration of *Beehive Tariff Investigation Order, Transmittal No. 8*.<sup>4</sup>

3. On June 16, 1998, Beehive filed Transmittal No. 11, which proposed to increase premium and non-premium local switching rates above the levels prescribed in *Beehive Tariff Investigation Order, Transmittal No. 8*. The Bureau rejected Beehive's proposed local switching rates, and suspended and designated for investigation proposed rates for tandem switched transport facility, tandem switched transport termination, and transport interconnection charge (TIC).<sup>5</sup>

4. On December 1, 1998, the Commission released a Memorandum Opinion and Order concluding its investigation of Transmittal No. 11.<sup>6</sup> The Commission found that Beehive had failed to meet its burden of proof under Section 204(a)(1) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 204(a)(1), to justify its proposed tandem switched transport facility, tandem switched transport termination, and TIC rates. It further found that it was unable to rely on supporting information submitted by Beehive for the purpose of prescribing rates. The Commission therefore prescribed rates for these transport services based on NECA's rates for these services, and directed Beehive to refund to its customers, with interest, the difference between NECA's rates and the rates filed by Beehive in June, 1998.<sup>7</sup>

### III. DISCUSSION

5. We reject as patently unlawful Beehive's revised local switching rates because these rate revisions contained in Transmittal No. 14 violate the Commission's rate prescription in the *Beehive Tariff Investigation Order, Transmittal No. 8*. Beehive contends that its filing is meant to allow its rates to be "consistent with NECA's rates, and to comply with the Commission's Order requiring Beehive to use the premium access rates set forth by NECA."<sup>8</sup> The Commission's Order concluding its investigation of Beehive's Transmittal No. 11 did not in any way permit or require Beehive to change the local switching rates previously prescribed for Beehive, nor did it require Beehive to delete its non-premium local switching rates. Beehive's contention that these elements of

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<sup>4</sup> *Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada*, CC Docket No. 97-249, Memorandum Opinion and Order, 13 FCC Rcd 19396 (1998).

<sup>5</sup> *See Beehive Telephone Company, Inc. and Beehive Telephone, Inc., Nevada*, CC Docket No. 98-108, Order, 13 FCC Rcd 12647 (1998); *Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada*, CC Docket No. 98-108, Order Designating Issues for Investigation, DA 98-2030 (Com. Car. Bur., rel. October 7, 1998).

<sup>6</sup> *Beehive Telephone Company, Inc., and Beehive Telephone, Inc., Nevada, Transmittal No. 11*, CC Docket No. 98-108, Memorandum Opinion and Order, FCC No. 98 - 320 (rel. December 1, 1998) (*Beehive Investigation Order*).

<sup>7</sup> *Id.* Transmittal No. 14 complied with the *Beehive Investigation Order* to the extent that Beehive filed the Commission's prescribed rates for its tandem switched transport facility, tandem switched transport termination, and TIC services.

<sup>8</sup> Beehive Transmittal No. 14 at 2.

Transmittal No. 14 were filed in order to comply with the *Beehive Investigation Order* is without basis.

6. It is well established that agencies are empowered to reject tariff filings that do not adhere to prescriptions of rates or practices affecting rates.<sup>9</sup> In *United Air Lines v. CAB*, the U.S. Court of Appeals for the Seventh Circuit upheld a decision of the Civil Aeronautics Board (CAB) to reject a tariff that proposed higher rates than had been previously prescribed by the CAB.<sup>10</sup> In this case, following a tariff investigation, the CAB prescribed certain fare levels for airline routes between Hawaii and the mainland.<sup>11</sup> Five days after filing conforming tariffs, United Airlines filed new tariffs reflecting higher fares than those prescribed by the CAB.<sup>12</sup> The CAB rejected the tariff filing, concluding that it has the power to issue an order fixing rates for the future and to reject tariffs that are inconsistent with any rate prescriptions.<sup>13</sup> The Seventh Circuit affirmed the CAB and stated, "[w]e believe that Congress no more intended in the Federal Aviation Act than in the other three similar acts [the Interstate Commerce Act, the Packers, and Stockyards Act, and the Natural Gas Act] to authorize the Board to establish a lawful rate only to be followed immediately by the necessity of passing upon other and different rates filed by the carriers."<sup>14</sup> If we were not permitted to reject tariffs that are inconsistent with rates prescribed by the Commission, we "would be unable to prevent a continual merry-go-round of investigations all dealing with the same subject."<sup>15</sup>

7. We note that Beehive is required under Section 69.3(f) of the Commission's Rules to file a complete revised access tariff effective July, 1 of each odd numbered year.<sup>16</sup> Beehive will thus have the opportunity to file new local switching rates on June 16, 1999.

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<sup>9</sup> *United Airlines, Inc. v. CAB*, 518 F.2d 256 (7th Cir. 1975); (affirming the CAB's decision to reject a tariff filed by United Airlines which proposed higher rates than those previously prescribed by the CAB); *AT&T v. FCC*, 487 F.2d 865, 874 (2d Cir. 1973) (stating that following a tariff investigation, a carrier must adhere to a fixed rate which can only be revised with prior Commission permission); *AT&T v. FCC*, 51 FCC.2d 619 (1975) (rejecting AT&T's tariff which proposed a higher rate of return than the Commission previously prescribed). See also, *ABC v. FCC*, 663 F.2d 133 (1980).

<sup>10</sup> *United Airlines v. CAB*, 518 F.2d at 261.

<sup>11</sup> *Id.* at 257.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* It is well established that Title II of the Communications Act of 1934 is similar to the Interstate Commerce Act.

<sup>15</sup> *United Airlines v. CAB*, 518 F.2d at 259, quoting CAB Order No. 74-12-109 at 34.

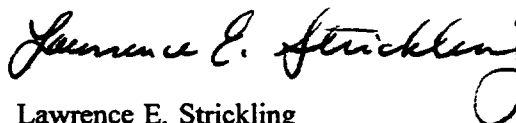
<sup>16</sup> 47 C.F.R. § 69.3(f).

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Sections 201(b) and 205(a) of the Communications Act of 1934, 47 U.S.C. §§ 201(b), 205(a), and authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the revisions pertaining to local switching services filed by Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada in Transmittal No. 14 ARE REJECTED.

9. IT IS FURTHER ORDERED that Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada SHALL file tariff revisions removing the rejected material no later than five business days from the release date of this Order. For this purpose, Sections 61.58 and 61.59 of the Commission's rules, 47 C.F.R. §§ 61.58, 61.59, are waived. Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada should cite the "DA" number of the instant Order as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION



Lawrence E. Strickling  
Chief, Common Carrier Bureau